

of 1972, as amended, in all cases not required to be referred to higher authority (see below). It is essential to the legality of a permit that it contain the name of the district engineer as the issuing officer. However, the permit need not be signed by the district engineer in person but may be signed for and in behalf of him by whomever he designates. In cases where permits are denied for reasons other than navigation or failure to obtain required local, state, or other federal approvals or certifications, the Statement of Findings must conclusively justify a denial decision. District engineers are authorized to deny permits without issuing a public notice or taking other procedural steps where required local, state, or other federal permits for the proposed activity have been denied or where he determines that the activity will clearly interfere with navigation except in all cases required to be referred to higher authority (see below). District engineers are also authorized to add, modify, or delete special conditions in permits in accordance with §325.4 of this part, except for those conditions which may have been imposed by higher authority, and to modify, suspend and revoke permits according to the procedures of §325.7 of this part. District engineers will refer the following applications to the division engineer for resolution:

- (1) When a referral is required by a written agreement between the head of a Federal agency and the Secretary of the Army;
 - (2) When the recommended decision is contrary to the written position of the Governor of the state in which the work would be performed;
 - (3) When there is substantial doubt as to authority, law, regulations, or policies applicable to the proposed activity;
 - (4) When higher authority requests the application be forwarded for decision; or
 - (5) When the district engineer is precluded by law or procedures required by law from taking final action on the application (e.g. section 9 of the Rivers and Harbors Act of 1899, or territorial sea baseline changes).
- (c) *Division engineer's authority.* Division engineers will review and evaluate

all permit applications referred by district engineers. Division engineers may authorize the issuance or denial of permits pursuant to section 10 of the Rivers and Harbors Act of 1899; section 404 of the Clean Water Act; and section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended; and the inclusion of conditions in accordance with §325.4 of this part in all cases not required to be referred to the Chief of Engineers. Division engineers will refer the following applications to the Chief of Engineers for resolution:

- (1) When a referral is required by a written agreement between the head of a Federal agency and the Secretary of the Army;
- (2) When there is substantial doubt as to authority, law, regulations, or policies applicable to the proposed activity;
- (3) When higher authority requests the application be forwarded for decision; or
- (4) When the division engineer is precluded by law or procedures required by law from taking final action on the application.

§325.9 Authority to determine jurisdiction.

District engineers are authorized to determine the area defined by the terms “navigable waters of the United States” and “waters of the United States” except:

- (a) When a determination of navigability is made pursuant to 33 CFR 329.14 (division engineers have this authority); or
- (b) When EPA makes a section 404 jurisdiction determination under its authority.

§325.10 Publicity.

The district engineer will establish and maintain a program to assure that potential applicants for permits are informed of the requirements of this regulation and of the steps required to obtain permits for activities in waters of the United States or ocean waters. Whenever the district engineer becomes aware of plans being developed by either private or public entities